IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1611 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? -No.

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PRATIK DIPAKBHAI VYAS THRO' VARUN DIPAKBHAI VYAS - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR RJ GOSWAMI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 27/01/2006

ORAL JUDGMENT

1.Pratik Dipakbhai Vyas (detenu) through his brother Varun Dipakbhai Vyas, petitioner has filed this

petition under Article 226 and 227 of the Constitution of India for a writ of certiorari for quashing and setting aside the externment order dated 5/4/2005 passed by the Deputy Commissioner of Police, Ahmedabad under the provisions of Bombay Police Act and order passed by the appellate authority dated 4/10/2005. Petition was filed on 17/11/2005. On 22/11/2005, this Court has issued Rule which was returnable on 19/12/2005. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. So, with consent of parties, matter is taken up for final hearing.

2.Mr.Y.U.Malek, learned advocate who appears on behalf of Mr.R.S.Goswami, learned advocate has filed his Vakalatnama. He has stated that in this case, the authority has issued show cause notice on 14/1/2004 under the provisions of Section 56(B) of the Bombay Police Act. He has stated that first reply to the said show cause notice was filed by the petitioner on 31/1/2004 and thereafter second reply was filed on 29/7/2004 and ultimately final written submission was filed. Though hearing was completed, the authority did not pass the final order of externment and passed the same on 5/4/2005. The learned advocate for the

petitioner has invited my attention to the order passed by the authority in which the authority has not given any reasons as to why there is a delay in passing the order of detention.

3. Being aggrieved and dissatisfied with the same, the petitioner has filed appeal under Section 60 of the Bombay Police Act. In the appeal also, ground-7 was taken that the authority has passed an order after unreasonable delay. He has also relied upon some of the judgments of the High Court in support of the contention raised before the authority. The Joint Secretary, Home Department, Gandhinagar only considered some of the incident alleging by the petitioner and statements of ten persons in this behalf and held that application filed by the petitioner is rejected.

4. Mr.Malek, learned advocate for the petitioner prays that order of externment is required to be quashed and set aside on the ground that the authority has passed an order after unreasonable delay and the authority has not mentioned any reasons as to why there is a delay in passing the order. In support of the same, he has relied upon the judgment of this Court

(Coram:K.M.Mehta, J.) in the case of Dilaji Bharthaji Vihol in Special Criminal Application No.1451 of 2005 decided on 1/12/2005.

5.Mr.L.R.Pujari, learned APP has stated that he has gone through the file and in the file there is no reason for delay. The authority has not filed any affidavit in this behalf.

6.In my view, the contention of Mr.Malek, learned advocate is well founded and for the reasons and findings, conclusion arrived at that the said petition is required to be allowed.

7.Having heard both the learned advocate for the parties and perused the material and evidence on record, in my view, the show cause notice is issued on 14/1/2004 whereas the order of externment was passed on 5/4/2005. In the body of the order, the authority has not explained the delay. Therefore, in my view, there is unexplained delay. Therefore, the order of externment deserves to be quashed and set aside on the ground of delay.

8.I have considered the facts and circumstances of the case. In view of the judgment of this Court in the case of Dilaji Bharthaji Vihol in Special Criminal Application No.1451 of 2005 (supra), the contention of the learned advocate for the petitioner is required to be accepted. The authority could not pass the said order.

9.In view of the same petition is allowed. Order of externment dated 5/4/2005 is quashed and set aside and order dated 4/10/2005, confirming the order of externment is also quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M.MEHTA, J.)

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